



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 122 3077]

Accretive Health, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before January 30, 2014.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/accretiveconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Accretive Health, Inc.- Consent Agreement; File No. 122 3077" on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/accretiveconsenthttps://ftcpublic.commentworks.com/ftc/fidelitynationalconsent>

by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington,

DC 20580.

FOR FURTHER INFORMATION CONTACT: David Lincicum, Bureau of Consumer Protection, (202-326-2773), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 31, 2013), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 30, 2014. Write "Accretive Health, Inc.- Consent Agreement; File No. 122 3077" on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure

that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/accretiveconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

a comment through that website.

If you file your comment on paper, write "Accretive Health, Inc.- Consent Agreement; File No. 122 3077" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 30, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent order applicable to Accretive Health Systems, Inc.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Accretive Health enters into service agreements with hospital systems around the country to provide services related to the hospital systems' "revenue cycle" operations. Revenue cycle

operations include registration, transcription, coding and medical documentation, billing, pricing, and collection of past due accounts. In exchange for these services, hospital systems pay Accretive Health both fixed fees and incentive payments based on a percentage of the monetary benefit from increased revenues. Accretive Health employees work at hospital facilities to assist with these services. As part of its service to client hospitals, Accretive Health collects, maintains, and has access to information about hospitals' patients, including sensitive health and personal information. This information may include patient names, dates of birth, billing information, diagnostic information, and Social Security numbers.

The Commission's complaint alleges that Accretive Health unfairly failed to provide reasonable and appropriate security for consumers' personal information it collected and maintained by engaging in a number of practices that, taken together, unreasonably and unnecessarily exposed consumers' personal data to unauthorized access. Among other things, Accretive Health created unnecessary risks of unauthorized access or theft of personal information by:

- a. Transporting laptops containing personal information in a manner that made them vulnerable to theft or other misappropriation;
- b. Failing to adequately restrict access to, or copying of, personal information based on an employee's need for information;
- c. Failing to ensure that employees removed information from their computers for which they no longer had a business need; and
- d. Using consumers' personal information in training sessions with employees and failing to ensure that the information was removed from employees' computers following the training.

The complaint further alleges that these failures contributed to a July 2011 incident in Minneapolis, Minnesota in which an Accretive Health laptop containing over 600 files with over 20 million pieces of information related to 23,000 patients was left in the locked passenger compartment of the employee's car and stolen. The laptop included sensitive health and personal information, including patient names, dates of birth, billing information, diagnostic information, and Social Security numbers. The user of this laptop had data that was not necessary to perform his job.

The proposed order contains provisions designed to prevent Accretive Health from engaging in the future in practices similar to those alleged in the complaint.

Part II of the proposed order requires Accretive Health to establish and maintain, or continue to maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Accretive Health's size and complexity, nature and scope of its activities, and the sensitivity of the information collected from or about consumers. Specifically, the proposed order requires Accretive Health to:

- designate an employee or employees to coordinate and be accountable for the information security program;
- identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks;

- design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures;
- develop and use reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from Accretive Health, and require service providers by contract to implement and maintain appropriate safeguards; and
- evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to operations or business arrangement, or any other circumstances that it knows or has reason to know may have a material impact on its information security program.

Part III of the proposed order requires Accretive Health to obtain within the first one hundred eighty (180) days after service of the order, and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) It has in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of sensitive consumer, information has been protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires Accretive Health to retain documents relating to its compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the

third-party assessments and supporting documents, Accretive Health must retain the documents for a period of three years after the date that each assessment is prepared. Part V requires dissemination of the order now and in the future to all current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Accretive Health submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part VIII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order’s terms in any way.

By direction of the Commission.

Janice Podoll Frankle,
Acting Secretary.

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